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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 696

ANONYMOUS (No. 1),

Petitioner,

versus

HON. WALTER R. HART, a Justice of the Supreme Court of the State of New York; HON. GEORGE A. ARKWRIGHT, a Justice of the Supreme Court of the State of New York, and DENIS M. HURLEY, counsel for the Judicial Inquiry.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

Petitioner prays that a writ of certiorari issue to review the final order of the Supreme Court of the State of New York, Appellate Division, Second Department, entered on July 21, 1958. That Court is possessed of the record required for review by this Court. The Court of Appeals, on November 13, 1958,

by final order refused to review the decision of the Appellate Division, Second Department.

Opinions Below

There are no opinions by either the Court of Appeals or the Appellate Division. There are printed in Appendix B, infra, the final order of the Appellate Division dismissing the petition and denying leave to appeal; also the order of the Court of Appeals denying leave to appeal.

Jurisdiction

Petitioner, on June 18th, 1959, instituted a proceeding in the Appellate Division against Hon. Walter R. Hart, a justice of the Supreme Court of the State of New York to compel him to perform a duty specifically enjoined by law, to wit, to decide a motion argued and submitted to him for a decision as a justice sitting at Special Term, Part I, of the Supreme Court, Kings County, pursuant to law.

Section 1287 of Article 78 of the Civil Practice Act (Gilbert Bliss, Civil Practice Act of New York), provides that if the petition be directed against a justice of the Supreme Court, the application shall be made to the Appellate Division in the first instance.

The original petition under Article 78, made the claim that appellant was denied due process of law under the Fourteenth Amendment, Federal Constitution, pleading:

> "That the said order of the Appellate Division, dated May 29, 1958, also insofar as it restricts

the petitioner and the other parties moving to vacate subpoenas duces tecum to the Additional Special Term for such relief violates the constitutional rights of the petitioner under the State Constitution and the due process clause of the 14th Amendment of the Federal Constitution."

And also:

"That by its order dated May 29, 1958, amending its order of March 5, 1958 nunc pro tunc, the Appellate Division, Second Department, has sought by indirection to oust the Supreme Court of its conceded jurisdiction to entertain and decide petitioner's said motion and further, has illegally nullified the order and decision of Mr. Justice Hart, dated April 28 and April 29, 1958, denying the cross motion of the respondents therein to refer the motion to quash the subpoena duces tecum to the Additional Special Term, thus depriving petitioner of due process of law and his constitutional rights."

By a final order dated July 21, 1958 the Appellate Division dismissed the petition without opinion.

By order dated October 6, 1958 leave to appeal to the Court of Appeals was denied by the Appellate Division.

By order dated November 13, 1958 leave to appeal to the Court of appeals was denied by that court.

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3).

Questions Presented

Whether Fourteenth Amendment, Federal Constitution, due process of law was denied to petitioner by the refusal of Mr. Justice Hart to render a decision on petitioner's motion to vacate the subpoena duces tecum which had been regularly argued and submitted to him for determination in accordance with the law of the State of New York.

Whether the final order of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department dismissing the petitioner's petition denied to the petitioner such due process.

Whether Fourteenth Amendment, Federal Constitution, due process of law was denied to petitioner by the refusal of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, to transfer petitioner's Article 78 proceeding to another department for determination.

Whether Fourteenth Amendment, Federal Constitution, due process of law would be denied to petitioner by the transfer of the motion to vacate the subpoena duces tecum to the Judicial Inquiry for determination.

Whether equal protection of the laws under the Fourteenth Amendment, Federal Constitution, would be denied to the petitioner by the transfer of the motion to vacate the subpoena duces tecum to the Judicial Inquiry for determination.

Statutes Involved

The statutory provisions involved, printed in Appendix A, infra, are as follows:

Constitution of the State of New York (Judiciary) Article 6, Sections 1, 2 and 19 (McKinney's Consolidated Laws of New York Annotated, Book 2, Part 2);

Judiciary Law of the State of New York, Section 90, Subdivision 10 (McKinney's Consolidated Laws of New York Annotated, Book 29);

Judiciary Law of the State of New York, Section 4 (McKinney's Consolidated Laws of New York Annotated, Book 29);

New York State Civil Practice Act, Section 1287.

Statement

The petitioner is an attorney at law having been duly admitted to practice in the Courts of the State of New York by the Appellate Division, Second Department, at the June 1919 Term.

By order dated January 21, 1957, which was amended by order dated February 11, 1957 the Appellate Division, Second Judicial Department, directed a judicial inquiry and investigation with respect to certain alleged improper practices and abuses by attorneys in Kings County and by persons acting in concert with them.

The Honorable George A. Arkwright, a justice of the Supreme Court, Kings County, was designated with "full power to compel the attendance of witnesses, their testimony under oath and the production of all relevant books, papers and records."

The said order also, "ORDERED, that, for the purpose of protecting the reputation of innocent persons, the said inquiry and investigation shall be conducted in private, pursuant to the provisions of the Judiciary Law (Section 90, subdivision 10), that all the facts, testimony and information adduced, and all papers relating to this inquiry and investigation, except this order, shall be sealed and be deemed confidential; and that none of such facts, testimony and information and none of the papers and proceedings herein, except this order, shall be made public or otherwise divulged until the further order of this Court, and it is further

ORDERED, that upon the conclusion of said inquiry and investigation the said Justice shall make and file with this court his report setting forth his proceedings, his findings and his recommendations."

On or about November 15, 1957 the petitioner received in the mail a subpoena duces tecum addressed to him issued by the said Judicial Inquiry directing the production before it of various books, papers and documents enumerated in the said subpoena.

On or about February 13, 1958 the petitioner applied by order to show cause to the Appellate Division, Second Judicial Department, *sitting en banc as a Special Term Court of original jurisdiction* for an order vacating and setting aside the said subpoena

duces tecum upon the ground that it constituted an abuse of process and a violation of the constitutional rights of the petitioner and an illegal search and seizure in violation of the provisions of Section 12, Article I of the Constitution of the State of New York and the Fourth Amendment of the Constitution of the United States.

Counsel for the Judicial Inquiry made a cross motion for an order dismissing the petitioner's application upon the ground that the Appellate Division lacked jurisdiction to hear and determine the said application in the first instance.

On March 5, 1958 the Appellate Division sitting en banc as a Special Term, while admitting that it possessed original jurisdiction to entertain the motion, nevertheless granted the said cross motion and dismissed the petitioner's application without prejudice to the petitioner's right, if so advised, to renew the said application in the Supreme Court (See decision and order of Appellate Division dated March 5, 1957; Exhibits "F" and "G" in record of Appellate Division accompanying this petition for certiorari).

Thereafter, by order to show cause dated March 22, 1958 the petitioner applied at Special Term, Part I of the Supreme Court, Kings County, for an order vacating the said subpoena duces tecum upon the grounds urged in the original application before the Appellate Division.

Prior to the return date of the said application the Hon. George A. Arkwright and Denis M. Hurley who were designated as respondents in the said proceeding

applied by cross notice of motion for an order transferring the petitioner's application to the Additional Special Term presided over by the Hon. George A. Arkwright in the conduct of the Judicial Inquiry.

On April 7, 1958 the petitioner's said application and the said cross motion regularly came on to be heard before Mr. Justice Walter R. Hart who was presiding at Special Term, Part I of the Supreme Court, Kings County, pursuant to designation by the Appellate Division, Second Department.

At that time the cross motion for an order transferring the petitioner's application to the Additional Special Term was orally argued before Mr. Justice Hart and a stenographic transcript of the said argument was made. (See transcript Exhibit "M" in record of Appellate Division accompanying this petition.)

It was conceded upon the said argument that (1) Special Term, Part I had jurisdiction of the petitioner's said application, (2) that only questions of law were involved therein and (3) that the respondents were not entitled to have the said application transferred to the Additional Special Term as a matter of right.

At the conclusion of the said oral argument the cross motion was denied by Mr. Justice Hart by oral decision. Thereafter a written opinion was filed by the said Justice and an order thereon duly entered and filed. (See opinion and order of Mr. Justice Hart, Exhibits "N" and "O" in record of Appellate Division accompanying this petition).

After the denial of the said cross motion the petitioner's application for an order vacating the subpoena duces tecum was submitted by both sides to Mr. Justice Hart for decision.

An order having been entered denying the aforesaid cross motion a notice of appeal therefrom to the Appellate Division, Second Department, was served by counsel for the respondents.

The petitioner thereupon moved in the said Appellate Division for an order dismissing the said appeal upon the ground that the order of Mr. Justice Hart denying the respondent's aforesaid cross motion was not appealable.

By order dated May 29, 1958 the Appellate Division, Second Department, dismissed the said appeal. (See order of Appellate Division same date, Exhibit "U" in record of Appellate Division accompanying this petition.)

Astonishingly enough the Appellate Division on the same day in order to accomplish by indirection what it could not accomplish directly, gratuitously undertook, on its own motion, to amend its prior order of March 5, 1958 nunc pro tunc so that it would read:

> "that the petitioner's application to vacate the said subpoena duces tecum be denied without prejudice to the petitioner's right, if so advised, to renew the said application at the Additional Special Term." (See opinion of Appellate Division and its order dated May 29, 1958; Exhibits "T" and "V" in record of Appellate Division accompanying this petition).

On or about June 9, 1958 at a conference duly called by Mr. Justice Hart the petitioner was informed that in view of the said nunc pro tunc amendment of the order of the Appellate Division, he, Mr. Justice Hart, was of the opinion that he was required to transfer the petitioner's application for an order vacating the said subpoena duces tecum to the Additional Special Term despite his order of April 29, 1958 denying the cross motion for such relief which had not been vacated or set aside.

Petitioner then requested Mr. Justice Hart to render a decision upon the application to vacate the subpoena duces tecum which had duly and regularly been submitted to him for decision but he refused to do so.

A proceeding was then instituted pursuant to the provisions of Article 78 of the Civil Practice Act for an order in the nature of mandamus directing Mr. Justice Hart to render a decision upon the said application.

Since the petition was directed against a Justice of the Supreme Court, Kings County, the application was made in the Appellate Division, Second Judicial Department, as provided by law.

By order of the Appellate Division the Hon. George A. Arkwright and Denis M. Hurley were permitted to intervene in the said proceeding.

An answer submitted by Mr. Justice Hart admitted all of the material allegations of the petition.

By order dated July 21, 1958 the Appellate Division dismissed the petition without opinion.

By order dated October 6, 1958 leave to appeal to the Court of Appeals was denied by the Appellate Division.

Thereafter by order dated November 13, 1958, the Court of Appeals refused to review the decision of the Appellate Division, Second Department. (These orders are printed in Appendix B, infra).

Reasons for Granting the Writ

The refusal of Mr. Justice Hart to render a decision on the petitioner's motion for an order vacating the subpoena duces tecum constitutes a denial of due process under the Fourteenth Amendment of the Federal Constitution.

Mr. Justice Hart, a justice of the Supreme Court of the State of New York, was regularly assigned by the Appellate Division, Second Department, to Special Term, Part I of the Supreme Court, Kings County, for the hearing of contested motions.

When petitioner's motion for an order vacating the subpoena duces tecum came on before Mr. Justice Hart it was conceded by counsel for the Judicial Inquiry that:

1. Special Term had jurisdiction of the motion.
2. Only questions of law were involved; and
3. The transfer of the motion to the Additional Special Term was not a matter of right.

Under the circumstances the refusal of Mr. Justice Hart to render a decision on the motion constituted a denial of due process to the petitioner.

The Supreme Court, Kings County, could not be summarily ousted of jurisdiction with respect to the petitioner's motion by the attempted nunc pro tunc amendment by the Appellate Division of its order made in an entirely different and unrelated proceeding to which Mr. Justice Hart was not a party.

The cross motion of counsel for the Judicial Inquiry for an order transferring the said motion to the Additional Special Term had been specifically denied by Mr. Justice Hart.

An appeal taken from the order of denial had been dismissed by the Appellate Division, Second Department.

In the face of the order denying the cross motion to transfer petitioner's motion to the Additional Special Term the attempt by the Appellate Division to accomplish the same result by indirection constituted a violation of due process under the Federal Constitution.

The petitioner had the constitutional right to maintain the proceeding to vacate the subpoena duces tecum in the Supreme Court, Kings County, and even if the Appellate Division in its original order had sought to restrict the petitioner to the Additional Special Term it could not have done so.

In *People ex rel. Sherman* v. *Adjourned Special Term*, 206 App. Div. 799, it was said:

> "The Extraordinary Special and Trial Terms of the Supreme Court convened by the Governor of the State are merely additional to those terms of the court already designated to be held under

the provisions of the Judiciary article of the Constitution. The Extraordinary Term created under the Judiciary Law do not exclude the Special and Trial Terms created by the Constitution from exercising jurisdiction already delegated to such terms. (*People ex rel. Newton* v. *Special Term, Part I*, 193 App. Div. 463.) The court is of the unanimous opinion that the motion to inspect the minutes of the grand jury could be made at any Special Term in the Ninth Judicial District, or at the Extraordinary Term. The majority of the court is of the opinion that an adjourned Special Term may consider new business first noticed before such adjourned term. (Judiciary Law, Sections 7, 148)."

In *Niagara Falls Power Co.* v. *Halpin*, 267 App. Div. 236, the Court said:

"Appellant has come into the Supreme Court of the State of New York, a court to which it has a legal and a constitutional right to come, not as a matter of favor but as a matter of right, a court having general jurisdiction in both law and equity. The jurisdiction of that court is unlimited, unqualified, and coextensive with the boundaries of the State. The Legislature has no power to deprive it of jurisdiction or to limit or qualify the same, although it may grant concurrent jurisdiction to other courts. The Supreme Court has jurisdiction to hear and determine any justiciable question of which the common-law or chancery courts of England would have had cognizance, subject only to terrotorial limitations, such jurisdiction being broad enough to embrace all causes of action and all persons within the State's juris-

diction. The door of that court should never be closed to any suitor who has a grievance which should be redressed on the spurious pretext that by going hat in hand to some administrative tribunal he may possibly be accorded a hearing."

Since the Special Term concededly had jurisdiction of the petitioner's application in which only questions of law were involved and since it was conceded that a transfer of the said application to the Additional Special Term was not a matter of right the petitioner may not be deprived of the right to have the said application determined by the respondent.

The transfer of petitioner's motion to vacate the subpoena duces tecum to the Judicial Inquiry would constitute a denial of the equal protection of the laws.

An application to vacate the subpoena duces tecum is a special proceeding which terminates in a final order from which an appeal may be taken as a matter of right:

Matter of Inter-City Associates Inc., 308 N. Y. 1044;
Matter of Alexander v. *N. Y. State Comm.*, 306 N. Y. 421;
Matter of Weil v. *N. Y. State Comm.*, 283 App. Div. 808.

Therefore, an order made by Mr. Justice Hart upon his determination of the petitioner's application would be appealable.

However, the Appellate Division, Second Department, has expressly held that since the Judicial In-

quiry directed by it is neither an action civil or criminal nor a special proceeding its orders are not appealable (*Matter of C Anonymous*, Oct. 7, 1958).

It has uniformly been held that a preliminary investigation such as this Judicial Inquiry where the proceedings are conducted in secrecy and persons appearing before it are deprived of the right to be represented by counsel is not a sitting of a court within the meaning of Section 4 of the Judiciary Law (*People ex rel. Karlin* v. *Culkin*, 248 N. Y. 465, 479; *Matter of Richardson*, 247 N. Y. 401, 407; *Matter of State Industrial Comm.*, 224 N. Y. 13; *People ex rel. Bender* v. *Milliken*, 185 N. Y. 35, 39; *Matter of Mitchel* v. *Cropsey*, 177 App. Div. 663).

Consequently, if the petitioner were relegated to the Judicial Inquiry for the making of his motion to vacate the subpoena duces tecum the order entered upon the decision of the motion would be final and no appeal could be taken therefrom.

In such circumstances the petitioner would be denied the equal protection of the laws under the Fourteenth Amendment to the Federal Constitution.

The Justice conducting the Judicial Inquiry would be disqualified to determine the motion to vacate the subpoena duces tecum.

The order of the Appellate Division directing the Judicial Inquiry, assigned to the Justice designated to conduct the Inquiry, dual and conflicting roles.

The said Justice was appointed investigator and prosecutor to conduct the inquiry and also to adjudi-

cate in a judicial capacity all matters in difference between himself an investigator and those persons appearing before him.

The subpoena duces tecum sought to be vacated by the petitioner was issued by the said Justice or under his direction.

In undertaking to hear the petitioner's application the said justice would be required to pass upon the validity of his own act in issuing the subpoena.

To permit the justice conducting the Judicial Inquiry to sit in review of his own act would constitute a denial of due process under the Fourteenth Amendment to the Federal Constitution.

Matter of Murchison, 349 U. S. 133;
Matters of Cross & Brown Co., 4 App. Div. 2d 501;
People ex rel Todd v. *Steinbrink*, 249 App. Div. 760.

For the same reason that a transfer of the petitioner's motion to vacate the subpoena duces tecum to the Judicial Inquiry would constitute a violation of due process, the refusal of the Appellate Division, Second Department, to transfer the petitioner's Article 78 proceeding to another department constituted a violation of due process.

The Article 78 proceeding was required by law to be instituted in the Appellate Division, Second Department (Civil Practice Act, Sec. 1287).

In order for the Appellate Division to determine whether Mr. Justice Hart had properly refused to

render a decision on the petitioner's motion it was necessary to determine whether its own nunc pro tunc order was valid and effective.

The said nunc pro tunc order had been made by the Justices of the Appellate Division sitting en banc as a Special Term court of original jurisdiction.

Section 19 of Article 6 of the New York State Constitution provides that no judge or justice shall sit in any appellate court in review of a decision made by him or by any court of which he was at the time a sitting member.

Consequently when the Appellate Division undertook to determine petitioner's Article 78 Proceeding it undertook at least indirectly to review its own order.

This constituted a violation of due process.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Dated: February 9, 1959

Respectfully submitted,

DAVID F. PRICE
Counsel for Petitioner
66 Court Street
Brooklyn, New York

APPENDIX A

(Statutory Provisions Cited and Quoted)

The source of the jurisdiction of the Supreme Court of the State of New York is to be found in Article 6, Section 1, of the Constitution of the State of New York, the pertinent part of which reads:

> "Section 1. The Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or hereafter may be prescribed by law not inconsistent with this article."

The State Constitution, by Section 2 of Article 6, conferred upon the justices of the Appellate Division the power to create the terms and to assign the justices of the Supreme Court to the various terms. Insofar as it is relevant it reads:

> "The justices of the Appellate Division in each department shall have power to fix the times and places for holding special and trial terms of the Supreme Court held therein and to assign the justices in the departments to hold such terms; or to make rules therefore."

The pertinent part of Article 6, Section 19 of the New York State Constitution referred to in this petition provides as follows:

> "* * *. No judge or justice shall sit in any appellate court in review of a decision made by him or by any court of which he was at the time a sitting member."

The pertinent section of the Judiciary Law of the State of New York, Article 2, provides in Section 4 as follows:

"Sec. 4. Sittings of courts to be public

The sittings of every court within this state shall be public, and every citizen may freely attend the same, except that in all proceedings and trials in cases for divorce, seduction, abortion, rape, assault with intent to commit rape, sodomy, bastardy or filiation, the court may, in its discretion, exclude therefrom all persons who are not directly interested therein, excepting jurors, witnesses, and officers of the court: As amended L. 1945, c. 649, Sec. 3, eff. April 9, 1945."

The New York Civil Practice Act, Art. 78 entitled PROCEEDING AGAINST A BODY OR OFFICER, provides in Sec. 1287 as follows:

§ 1287. Where proceeding to be brought. The petitioner shall apply for relief at a special term of the supreme court held within the judicial district embracing the county where the respondent made the determination complained of or refused to perform the duty specifically enjoined upon him by law, or wherein the proceedings are brought or taken in the course of which the matter sought to be restrained originated, as the case may be, or wherein it is alleged in the petition that the material facts otherwise took place; or wherein the principal office of the respondent is located. The special term at which relief is applied for may, in the exercise of its discretion, transfer the proceeding to the county wherein the principal office of the respondent is located. If

the petition be directed against a justice of the supreme court or a judge of the county court or the court of general sessions, the application shall be made to the appellate division of the judicial department embracing the county wherein the action is triable or the special proceeding is brought, in the course of which the matter sought to be enforced or restrained, as the case may be, originated, unless a term of the appellate division of said department is not in session, in which case the application may be made to the appellate division in an adjoining judicial department; and except that the petitioner may apply to any court or judge expressly authorized by statute to grant relief. If the petition be directed against the regents of the university of the state of New York, the commissioner of education, the state tax commission, the public service commission, the comptroller, the department of agriculture and markets or the water power and control commission, the application shall be made to a special term of the supreme court in the third judicial district.

Subdivision 10, Section 90, Judiciary Law of the State of New York, which may be found in McKinney's Consolidated Laws of New York, Annotated, Book 29, reads, as follows:

"SEC. 90. *Admission to and removal from practice by appellate division*

* * * * *

10. Any statute or rule to the contrary notwithstanding, all papers, records and documents upon the application or examination of any person for admission as an attorney and counsellor

at law and upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney or attorneys, shall be sealed and be deemed private and confidential. However, upon good cause being shown, the justices of the appellate division having jurisdiction are empowered, in their discretion, by written order, to permit to be divulged all or any part of such papers, records and documents. In the discretion of the presiding or acting presiding justice of said appellate division, such order may be made either without notice to the persons or attorneys to be affected thereby, or upon such notice to them as he may direct. In furtherance of the purpose of this subdivision, said justices are also empowered, in their discretion, from time to time to make such rules as they may deem necessary. Without regard to the foregoing, in the event that charges are sustained by the justices of the appellate division having jurisdiction in any complaint, investigation or proceeding relating to the conduct or discipline of any attorney, the records and documents in relation thereto shall be deemed public records."

APPENDIX B

(Copies of Orders Below)

Order Dismissing Petition

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 21st day of July, 1958.

Present—Hon. Gerald Nolan,
Presiding Justice.

" Henry G. Wenzel, Jr.,
" Charles E. Murphy,
" James T. Hallinan,
" Philip M. Kleinfeld,
Justices.

In the Matter of the Application of Anonymous (No. 1),

Petitioner,

for an order pursuant to Article 78 of the Civil Practice Act, compelling the Hon. Walter R. Hart, a Justice of the Supreme Court of the State of New York, to perform a duty specifically enjoined by law, to wit, to decide a motion argued and submitted to him for decision as a Justice sitting at Special Term, Part I, of the Supreme Court, Kings County, pursuant to designation by the Appellate Division of the Supreme Court, Second Judicial Department,

Respondent;

Hon. George A. Arkwright, a Justice of the Supreme Court of the State of New York, and Denis M. Hurley, counsel for the Judicial Inquiry,

Intervenors.

An order having been made by this court on January 21st, 1957, directing a judicial inquiry and investigation as to the matters set forth in the petition of the Brooklyn Bar Association, and having further directed that such inquiry and investigation be conducted by the Honorable George A. Arkwright, a Justice of the Supreme Court, Second Judicial District, and having designated Denis M. Hurley, Esq., an attorney and counselor at law to aid said justice in the conduct of such inquiry and investigation; and a proceeding having been instituted by petitioner (Anonymous No. 1), pursuant to Article 78 of the Civil Practice Act, by petition verified the 18th day of June, 1958, for an order restraining respondent, Hon. Walter R. Hart, Justice of the Supreme Court, from referring the petitioner's motion to vacate a subpoena duces tecum issued by the Judicial Inquiry, to the Additional Special Term of the Supreme Court, Kings County, for a decision and to direct said respondent to render a decision upon the said motion, and the said proceeding under Article 78 of the Civil Practice Act having come on to be heard before this court by an order to show cause dated June 18th, 1958.

Now on reading and filing the petition verified June 18th, 1958, the order to show cause dated June 18th, 1958, the memorandum of petitioner (Anonymous No. 1), the answer of respondent, the answer of the intervenors, the brief of the intervenors, and all the papers filed herein, and the said proceeding having been submitted by Mr. David F. Price of Counsel for petitioner (Anonymous No. 1), and submitted by Mr. Denis M. Hurley (Michael Caputo of Counsel), for intervenors; and due deliberation having been had thereon:

If is Ordered that the petition of Anonymous No. 1, be and the same hereby is dismissed, with $50 costs and disbursements.

Enter:

JOHN J. CALLAHAN
Clerk.

NOTICE OF ENTRY

Supreme Court of the State of New York,
Appellate Division,
Second Judicial Department,
Clerk's Office, Borough of Brooklyn, N. Y.

I, JOHN J. CALLAHAN, Clerk of the Appellate Division of the Supreme Court of the State of New York in the Second Judicial Department, do hereby certify that the foregoing is a copy of the order made by said Court upon the motion in the above entitled proceeding, and entered in my office on the 21st of July, 1958.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at the Borough of Brooklyn, this 9th day of September, 1958.

JOHN J. CALLAHAN
Clerk.

(Seal)

Order on Motion for Leave to Appeal to the Court of Appeals

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 6th day of October, 1958.

Present—Hon. Henry G. Wenzel, Jr.,
Acting Presiding Justice

" George J. Beldock,
" Charles E. Murphy,
" James T. Hallinan,
" Philip M. Kleinfeld,
Justices.

In the Matter of the Application of Anonymous (No. 1),

Petitioner,

for an order pursuant to Article 78 of the Civil Practice Act, compelling the Hon. Walter R. Hart, a Justice of the Supreme Court of the State of New York, to perform a duty specifically enjoined by law, to wit, to decide a motion argued and submitted to him for decision as a Justice sitting at Special Term, Part I, of the Supreme Court, Kings County, pursuant to designation by the Appellate Division of the Supreme Court, Second Judicial Department,

Respondent:

Hon. George A. Arkwright, a Justice of the Supreme Court of the State of New York, and Denis M. Hurley, counsel for the Judicial Inquiry,

Intervenors

(No. 1024)

The above named petitioner (Anonymous No. 1), in this proceeding having made a motion for leave to appeal to the Court of Appeals from the order of this Court entered July 21, 1958, dismissing the petition, herein, and the motion having been duly submitted:

Now on reading and filing the papers in support of and in opposition to said motion; and all the papers upon which the proceeding was heard; and due deliberation having been had thereon:

It is Ordered that the said motion for leave to appeal to the Court of Appeals be and the same hereby is denied.

Enter:

JOHN J. CALLAHAN
Clerk.

NOTICE OF ENTRY

Supreme Court of the State of New York,
Appellate Division,
Second Judicial Department,
Clerk's Office, Borough of Brooklyn, N. Y.

I, JOHN J. CALLAHAN, Clerk of the Appellate Division of the Supreme Court of the State of New York in the Second Judicial Department, do hereby certify that the foregoing is a copy of the order made by said Court upon the motion in the above entitled proceeding, and entered in my office on the 6th day of October, 1958.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at the Borough of Brooklyn, this 8th day of October, 1958.

JOHN J. CALLAHAN
Clerk.

(Seal)

Order of Court of Appeals Denying Motion for Leave to Appeal

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the thirteenth day of November A. D. 1958.

Present, HON. ALBERT CONWAY,
Chief Judge, presiding.

Mo. No. 548

In the Matter of the Application of ANONYMOUS (No. 1),

Appellant,

for an order &c. compelling HON. WALTER R. HART, a Justice of the Supreme Court of the State of New York, to perform a duty specifically enjoined by law, &c.,

Respondent,

HON. GEORGE A. ARKWRIGHT, a Justice of the Supreme Court of the State of New York, & ano., &c.,

Intervenor-Respondents.

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied.

A copy

SEAL

GEARON KIMBALL,
Deputy Clerk